

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matters of)	
)	
Federal-State Joint Board on Universal Service)	CC Docket No. 96-45
)	
Muti-Association Group (MAG) Plan for)	CC Docket No. 00-256
Regulation of Interstate Services of Non-Price)	
Cap Incumbent Local Exchange Carriers)	
and Interexchange Carriers)	

**NATIONAL TELEPHONE COOPERATIVE ASSOCIATION
REPLY TO
OPPOSITIONS TO PETITION FOR RECONSIDERATION**

The National Telephone Cooperative Association (NTCA)¹ hereby responds the oppositions filed by AT&T and MCI concerning NTCA's petition for reconsideration to amend the safety valve rule for acquired exchanges and to clarify the rule for calculating the annual amount of the rural incumbent local exchange carrier portion of the nationwide loop cost expense adjustment.

**I. THE COMMISSION SHOULD REJECT AT&T'S AND MCI'S
ARGUMENTS AGAINST AMENDING THE SAFETY VALVE RULE**

AT&T and MCI argue that NTCA's proposal to amend the safety valve rule would disturb the limitations on universal support received under section 54.305 of the Commission's rules. They also assert that the proposal would encourage carriers to unreasonably rely on universal service support when deciding whether to purchase an

¹ NTCA is a non-profit corporation established in 1954 and represents 545 rural telecommunications companies. NTCA members are full service telecommunications providers for rural communities providing local, wireless, cable, Internet, satellite and long distance services. All NTCA members are small carriers that are defined as "rural telephone companies" in the Telecommunications Act of 1996 (Act). Members are dedicated to providing competitive modern telecommunications services and ensuring the economic future of their communities in rural America.

exchange.² Although the Commission adopted Section 54.305 on the premise that the rule would discourage unreasonable reliance on universal service support in making acquisition decisions, it had no evidence to make that assumption. NTCA and others in fact seek reconsideration of Section 54.305.³ Safety valve rules, in fact, recognize that section 54.305 is hampering universal service. The rules seek to ameliorate the harm imposed by the “parent trap” rule. The one-year limit is just another crippling adjunct which defeats the purpose of the safety valve.

There are sufficient limitations on the amount of safety valve support available to carriers under NTCA’s proposal. First, carriers are limited on the amount of safety valve support they can receive in any given year to 50 percent of the difference between the index year and subsequent year expense adjustment for the acquired exchange. Second, a five percent cap limits the overall safety valve support available to all rural carriers acquiring exchanges and prevents excessive growth of the universal service fund. Third, carrier investments in acquired exchanges are subject to state commission review prior to approving any increase in a rural carrier’s revenue requirement to compensate for the intrastate portion of these investments. Fourth, as a result of the Telecommunications Act of 1996, rural carriers are under significant competitive pressure from eligible

² AT&T’s Opposition to Petition for Reconsideration, CC Docket Nos. 96-45 and 00-256, pp. 2-4 (July 31, 2001); MCI’s Opposition to Petition for Reconsideration, CC Docket Nos. 96-45 and 00-256, pp. 3-4 (July 31, 2001).

³ See Rural Telecommunications Coalition Petition for Reconsideration on the First Report and Order in CC Docket 96-45, filed July 17, 1997. See also NTCA’s Comments filed *In the Matter of Promoting the Deployment and Subscribership in Unserved and Underserved Areas, Including Tribal and Insular Areas*, CC Docket 95-45, FCC 99-204, pp. 5-9 (December 17, 1999); NTCA’s Comments *In the Matter of the Federal-State Joint Board on Universal Service Recommendation for Phasing Down Hold Harmless Support*, CC Docket No. 96-45, DA 00-1536, pp. 3-4 (filed August 14, 2000); NTCA’s Comments on the *Rural Task Force Recommendation to the Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, FCC 00J-3, pp. 8-9 (filed November 3, 2000); NTCA’s Comments on the *Further Notice of Proposed Rulemaking Concerning the Rural Task Force Recommendation to the Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, FCC 01-8, pp. 4-11 (filed February 26, 2001).

telecommunications carriers to keep their costs and prices low and not to invest in over-priced exchanges.

Furthermore, the driving forces behind large company sales of rule exchanges demonstrate why not only an amendment to the safety valve rule but complete repeal of section 54.305 is needed. The averaging tariff methodologies employed in the telecommunications industry prior to the divestiture of AT&T and prior to the 1996 Act were an implicit form of support provided to high cost rural exchanges served by the large regional Bell operating companies (RBOCs). These average rate structures permitted full recovery of cost for the RBOCs as long as they were regulated under rate-of-return and, on an overall basis, earned an adequate return on their investment. When the RBOCs became subject to competition and incentive regulation, however, averaging did not result in upgrades in their high cost rural exchanges. As CenturyTel has found:

Having purchased hundreds of thousands of rural exchange lines from larger carriers, CenturyTel has observed that rural exchanges are often in areas where selling carriers have invested the least; thus, significant improvements to the infrastructure are needed following the transfer. Moreover, a year or more may sometimes lapse between the time that the seller decides to sell the exchanges and the actual closing, which allows the exchanges to fall into further decline. By delaying the distribution of the safety valve support for a year, the Commission's current rules simply encourage further neglect of rural exchanges following transfer. Rather, the Commission's rules should encourage acquiring carriers to begin providing improved services to rural customers immediately following acquisition.⁴

In the long run, a public policy encouraging independent companies to acquire rural exchanges no longer wanted by large local exchange carriers will improve the service provided and increase the cost effectiveness of the rural network. This approach, over time, would lower the amount of universal service support otherwise required in these rural exchanges.

NTCA welcomes the creation of safety valve support, but requests that the Commission encourage carriers to invest in purchased exchanges during the first year after acquisition of an exchange rather than postpone this investment until the second year. The fact that existing support is based on past investment and does not include any support for new investment is a sound public policy basis to amend the rule to permit safety valve support for the first year based on investment made by the acquiring carrier during that year. Failure to recognize this investment only penalizes the acquiring carrier for improving service to the consumers living in these exchanges.

II. AT&T'S CLAIM THAT COST DATA IS NOT AVAILABLE FOR DEFINING A FIRST YEAR EXPENSE ADJUSTMENT BASED ON THE SELLER'S COST IS EASILY REMEDIED

AT&T asserts that NTCA's proposal to amend the safety valve rule could not be implemented because it is premised on defining the first index year expense adjustment as the seller's expense adjustment for the exchange at the time of the sale. AT&T also claims non-rural LECs report their expenses on a study area basis rather than on an exchange basis, and hence there is no available exchange level expense data that is germane for the exchange sold.⁵ AT&T is wrong on both counts. NTCA's proposal can be implemented and the selling carrier's investment in the acquired exchange area can be ascertained.

From time to time, regulated rate of return companies purchase or sell operating plant between each other. Whenever such a sale occurs, it is necessary to adjust the rate bases of both the selling and acquiring companies. This requires a determination of the original cost, the depreciation reserve and the net book of each pertinent account for all

⁴ *Comments of CenturyTel, Inc.*, CC Docket Nos. 96-45 and 00-256, p. 4 (July 31, 2001).

of the regulated plant sold between regulated companies. The methodologies for accomplishing this do exist. The same methodology can be applied to determine the rate base of plant sold and so can the revenue requirement associated with the transferred investment.

The net book of plant sold can be calculated and used as the basis for determining the revenue requirement of the existing plant at the time of sale. This revenue requirement should be used as the basis for assessing the impact of new investment made by the acquiring company subsequent to the purchase of the exchange area. A simple comparison can be made of the difference in the revenue requirement for the rate base at the time of purchase and the revenue requirement for the net plant in service one year later. NTCA proposes that the difference be used as the expense adjustment for the first year for calculating safety valve support. In subsequent years, this amount should be added to the existing expense adjustment rules to continue to capture the investments made by the acquiring company during the first year.

This approach would recognize all of the new investment made by the acquiring rural local exchange company (LEC). Failure to recognize first year investments discourages immediate investments by the acquiring carrier and hinders the improvement of service to the customers of the acquired exchange. NTCA believes it is good policy to encourage such investment.

⁵ AT&T's Opposition to Petition for Reconsideration, CC Docket Nos. 96-45 and 00-256, p. 4 (July 31, 2001).

III THE COMMISSION SHOULD CLARIFY SECTION 36.603(A) FOR CALCULATING THE RURAL CARRIER PORTION OF THE 2002 NATIONAL LOOP COST EXPENSE ADJUSTMENT

AT&T contends that it was not the Commission's intent to grow the rural universal service fund from annualized 2001 levels.⁶ NTCA disagrees and seeks clarification from the Commission. The Rural Task Force (RTF) recommendation was based on an annualized amount for the calendar year 2001. The FCC implemented the RTF recommendation mid-year 2001. The numbers contained in footnote 46 in the RTF recommendation for the first year corresponds to the \$126 million referenced by Chairman Powell in his statement accompanying the RTF order.⁷ It appears from the Chair's statement and calendar year reference in the RTF recommendation that the intent of the RTF and FCC was to establish a new annualized base and not to reduce its effect by half a year under the old cap and half a year under the new cap. AT&T's interpretation has the effect of only rebasing the fund by one-half of the recommended amount. The Commission should clarify the rule to avoid the impact of a mid-year implementation on the going forward cap amount. To do otherwise, would reduce the rebasing to one-half of the difference between the old cap and the year 2001 amount without the cap. Instead of the \$126 million that Chairman Powell stated, first year support would be materially reduced.

⁶ AT&T's Opposition to Petition for Reconsideration, CC Docket Nos. 96-45 and 00-256, pp. 4-5 (July 31, 2001).

⁷ See *Rural task Force Recommendation to the Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, footnote 46, (rel. September 29, 2000); and *In the Matter of the Federal-State Board on Universal Service; Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, Fourteenth Report and Order, Twenty-Second Order on Reconsideration, and Further Notice of Proposed Rulemaking in CC Docket No. 96-45 and Order in CC Docket No. 00-256, FCC 01-157, Separate Statement of Chairman Michael K. Powell (rel. May 23, 2001).

The Commission adopted the rules for succeeding years from those proposed by the RTF. The proposed annual adjustment rules using the Rural Growth Factor (RGF) did not contemplate nor envision a mid-year implementation. The final rules adopted by the Commission should therefore be clarified for the year 2002 to achieve the level of adjustment intended by the RTF and the Commission.

IV. CONCLUSION

To ensure consumers in rural regions of the Nation with access to affordable telecommunications services in accordance with section 254 of the Telecommunications Act of 1996, the NTCA respectfully requests that the Commission: (1) amend its safety valve rules to allow acquiring carriers to receive safety valve support for investments in acquired exchanges during the first year; and (2) clarify 47 C.F.R. § 36.603(a) by calculating the rural carrier portion of the 2002 national loop cost expense adjustment on an annualized expense adjustment for 2001 based on the second half of the year 2001 and excluding the portion of the first half of the year 2001 limited by the previous cap.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Gail C. Malloy, certify that a copy of the foregoing Reply to Oppositions to Petition for Reconsideration of the National Telephone Cooperative Association in CC Docket Nos. 96-45 and 00-256, FCC 01-157 was served on this 10th day of August 2001 by first-class, U.S. Mail, postage prepaid, to the following persons:

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